IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 631 OF 2000

Shankar Diwal Wadu ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Mrs. Latika P. Khemani- advocate appointed for appellant/accused.
Mrs. P.H.Kantharia APP for the State.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 24TH SEPTEMBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the the order of conviction passed by the II Additional Sessions Judge, Palghar in Sessions Case No. 852 of 1996 under sections 302, 506 of IPC on 23-3-1999 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned counsel for the accused and the learned Prosecutor, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution story as it emerges on our re-appreciation of evidence stated briefly is that the accused Shankar Wadu is the brother of Mahu Wadu who was assaulted, which assault resulted in death. The incident occurred around 8.00 p.m. on 22-10-1995 at Kainad Wadu Pada, Taluka Wada, District Thane, where both the accused and the victim were residing along with other close relations. According to the prosecution, accused wanted to marry one Kamlibai and was enraged by her refusal. At that very time, he was told by the victim that he cannot force and dragged Kamlibai to his house. The accused got enraged by such unwarranted advise and therefore lifted wooden plank (pat) and hit her on the head of the victim who died on the spot. Complaint of this assault was lodged by one Yeshubai who is closely related to both the accused and the victim. On receipt of this report, investigation was conducted, the accused was arrested. The prosecution has examined as many as eight witnesses to prove its charge of murder against the accused and the learned trial Judge on appreciation of the evidence came to the conclusion of guilt and convicted the accused as aforesaid. It is this order which is challenged in this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed by the

learned advocate appointed to defend the accused/appellant.

4. The main attack by the learned counsel on the judgment of the trial court is that all the witnesses are very interested witnesses and there are contradictions in the deposition which required to be disbelieved and consequently the judgment is liable to be set aside. On the contrary the learned A.P.P. defended the judgment by pointing out several consistencies in the judgment and corroborative substance in the evidence which existed and claimed upholding of the judgment. We have to appreciate these contentions in the light of our re-appreciation of evidence.

5. P.w.1 Kusum is related to both the accused and the victim. Infact all the persons connected with this case are closely related to each other who are all adivasis and were the residents of adivasi pada called Kainad vada. She has deposed that three years ago at the time of Diwali, victim Mahu had come to their house and was taking his meals in the house of the witness, when accused came to the house and assaulted Mahu with a wooden plank (pat) as a result of which he sustained bleeding injuries and was declared dead before admitted

to hospital. She has identified the plank used to hit. However in the cross examination she has stated that she did not factually see the accused assaulting Mahu. Her evidence would therefore require substantive corroboration which unfortunately comes from her daughter P.w.2 Sangita. P.w.2 Sangita deposed that on the faithful day she was providing meals to Mahu the victim when the accused came there and assaulted deceased Mahu with plank (pat) and went away. She identified the property. However in the cross examination she admits that she had gone with her mother to the field. Both these witnesses therefore states of something on information received and not the eye witness to the incident.

6. P.w.3 Yesubai is the complainant and daughter of victim Mahu. This witness has deposed that on the date of incident she was in the house when her uncle Shankar the accused came there at around 8 p.m. He (Shankar) then dragged Kamlibai as he wanted to keep her. Witness then says that Shankar dragged Kamlibai to the house of Sadu. Kamlibai was saying that she did not want to marry Shankar at that time. She then states that her father victim Mahu asked the accused not to force Kamlibai to marry. Accused then lifted a pat and hit Mahu on his head. He sustained bleeding injury.

The accused also gave kick and fist blows to the victim and ran away. She then goes on to describe how the victim was taken to the hospital, how the FIR was lodged and she proves it as Exh.17. The witness was cross examined. She is therefore the first eye witness to the incident and it will be seen that P.w.1 and 2 though they are not eye witnesses what they have deposed in the court substantially corroborates to this eye witness. There is therefore adequate corroboration to the testimony of this eye witness and there is therefore no reason to disbelieve the testimony of these three witnesses merely because they are closed relations to both the accused and the victim.

7. Then we have the evidence of Kamlibai P.w. 4, who appears to be the motive for the rash action on the part of the accused. She says that she knows the accused. He is her brother-in-law. Then she deposed that on 21-10-1995 her elder brother-in-law i.e. the victim was taking his meals around 8 p.m. when the accused came there and held the witness by her hand and dragged her saying the witness should become the accused's mistress. On her refusal Mahu asked the accused to release the hand of the witness and therefore the accused hit Mahu with wooden plank which resulted bleeding injury to Mahu. The witness says

that they tried to intervene but held by the accused who later on ran away. She also identifies the property.

8. The allegations of the prosecution that it was because of Kamlibai that the incident occurred is thus proved by Kamlibai herself. She is the eye witness, who is also corroborated by all material particulars by P.w.1 and 2. There is therefore no reason why the evidence of these witnesses should be discarded.

9. P.w.5 is Janardan who is the witness of the execution of the panchanama and the seizure of the wooden plank which was used for hitting the victim. He proves the panchanama. P.w.6 is the panch of seizure of saree who has turned hostile. This was the saree of the wife of victim Mahu. However nothing turns on this seizure. P.w.7 Shivraj is the doctor who conducted the post martum and proved that the deceased met homicidal death. He has opined that the death was caused due to head injury and that it was possible to be caused by a wooden plank. He proves the post martum report.

10. P.w.7 is the station house officer who proves all other documents, which were required to be proved. It was on the basis of this evidence that the learned

trial Judge came to the conclusion of guilt. In our opinion therefore the judgment of the learned trial Judge is correct. He has taken into consideration the entire evidence on record. Our findings on our re-appreciation is also the same. We have therefore no hesitation in accepting the evidence of the two eye witnesses P.w.3 and 4 who are duly corroborated on all material particulars of P.w.1 and 2 and the medical evidence also entrinzic to support the theory of the prosecution that it was the accused who committed murder. In view of the fact that we have in total agreement of the view of the learned trial Judge, we see no reason to interfere with this appeal.

11. In the result the appeal fails and it is dismissed.

12. The fees quantified to the learned prosecutor and the learned advocate for the accused/appellant is Rs. 750/- for this appeal.

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